

## Fishery Conservation and Management

§ 600.1108

I request the CFEC: (1) not to renew my above-identified entry permit; and (2) not to authorize any transfer of my entry permit.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

### APPENDIX D TO § 600.1107—CONDITIONAL RELINQUISHMENT OF SOUTHEAST SALMON PURSE SEINE ENTRY PERMIT

[AS 16.43.150(I)]

Upon satisfaction of the conditions that the Southeast Revitalization Association (SRA) accepts my bid and that NMFS agrees to pay my full bid amount to me, the SRA may submit this executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit to the Commercial Fisheries Entry Commission.

I fully understand this relinquishment of my permanent entry permit # \_\_\_\_\_ under AS 16.43.150(i) is permanent, and I will not be able to reinstate the permit.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

[76 FR 61990, Oct. 6, 2011]

### § 600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose.* This section implements the capacity reduction program that Title II, section 219(e) of Public Law 108-447 established for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1105 of subpart M of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

*Reduction fishery* means the Hook & Line, Catcher Processor (Longline Subsector); sometimes referred to as the “H&LCP Subsector” portion of the BSAI Pacific cod ITAC (in metric tons)

set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the rounded number of pounds in a metric ton) or the Longline Subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsement.

(c) *Capacity Reduction Program.* As a result of the completion of the Selection Process, written notification from the FLCC to NMFS identifying the selected offeror, and submission of the reduction plan, the capacity reduction program is implemented as follows:

(1) *Loan repayment*—(i) *Term.* As authorized by section 219(B)(2) of the Appropriations Act, the capacity reduction loan (the Reduction Loan) shall be amortized over a thirty (30) year term. The Reduction Loan’s original principal amount may not exceed the amount approved by the subsector. The subsector has currently approved a loan of two million seven hundred thousand dollars (\$2,700,000). Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full. Repayment calculations and records will be kept separately for each program.

(ii) *Interest.* The Reduction Loan’s interest rate will be the U.S. Treasury’s cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan’s initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury’s cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan’s 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the

Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Longline Subsector. In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound.  $[2,900,000 / (100,000 \times 2,205) = .01315]$ . The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as provided for in paragraph (c)(1)(iii)(B) of this section.

(B) Fees must be assessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a standardized additional fee will be assessed. The additional fee shall be one cent per pound round weight, which is calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made

and communicated to the post-reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fishery's fee rate to the maximum 5 percent of revenue for Pacific cod, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan.* NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs in subpart L of this part. The reduction loan shall be subject to the provisions of § 600.1012, except that: the subsector members' obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection.* The LLP License holders of vessels harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by the LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Recordkeeping and reporting.* The holder of the LLP Licenses on which vessels harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(2) *Agreement with Secretary.* The Selected Offeror shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. The LLP License set forth on the Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(d) *Decisions of the Auditor and the FLCC.* Time was of the essence in developing and implementing a Reduction Plan and, accordingly, the Offeror is limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings was solely ministerial in nature. That is, the Auditor verified whether the documents submitted by Subsector Members were, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and signed by an Authorized Party. The Auditor presumed the validity of all signatures on documents submitted. The Auditor made no substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents was material).

(2) [Reserved]

(e) *Specific performance.* The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Appropriations Act is both unique and finite and that failure of the Selected Offeror to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC and the Subsector Members. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror to fulfill their obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of

competent jurisdiction without obligation to arbitrate such action.

(f) *Miscellaneous—* (1) *Termination.* The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(2) *Choice of law/venue.* The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(3) *Incorporation.* All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(4) *Counterparts.* The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(g) *Amendment.* All Subsector Members acknowledge that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute

to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(h) *Warranties.* The Offeror must expressly warrant and represent in the Reduction Agreement that:

(1) The Offeror has had an opportunity to consult with an attorney or other advisors with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) The Offeror has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of the Offeror;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of the Offeror;

(4) The person executing the Reduction Agreement has been duly authorized by the Offeror to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) The Offeror has taken all actions necessary for the Reduction Agreement to constitute a valid and binding obligation, enforceable in accordance with its terms.

(i) *Approval of the Reduction Plan.* Acceptance of the Offer is at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and subpart M of this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of section 219(e) of the FY 2005 Appropriations Act (Pub. L. 108–447);

(2) Be consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(j) *Referendum.* The following provisions apply to the Reduction Plan of this section to the extent that they do not conflict with subpart L of this part including §§ 600.1009, 600.1010, 600.1013, and 600.1014 or 16 U.S.C. 1861a; except where the referendum is successful if a majority of all permit holders within the fishery vote in favor of the Reduction Program is accordance with 18 U.S.C. 1861a(d)(1)(B).

(k)(1) *Fee payment and collection system.* Upon successful completion of the Referendum discussed above as authorized by Public Law 108–447 and in accordance with 16 U.S.C. 1861a and § 600.1012 this fee collection system establishes:

(i) The subsector members' obligation to repay the reduction loan, and

(ii) The loan's principal amount, interest rate, and repayment term; and

(iii) In accordance with §§ 600.1013 through 600.1016, implements an industry fee system for the reduction fishery.

(2) *Reduction loan amount.* The reduction loan's original principal amount is \$2,700,000.

(3) *Interest accrual from inception.* Interest begins accruing on the reduction loan from the date which NMFS disburses such loan.

(4) *Interest rate.* The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year in which loan is disbursed plus 2 percent.

(5) *Repayment terms.* For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from the date NMFS disburses the loan. However, fee collections shall continue indefinitely until the loan is fully repaid.

(6) *Reduction loan repayment.* The subsector members shall repay the reduction loan in accordance with §600.1012. Both fish buyers and fish sellers are considered subsector members for purposes of fee collection, deposit, disbursement, and accounting in accordance with §600.1013.

(i) Subsector members in the reduction fishery shall collect and pay the fee amount in accordance with §600.1105;

(ii) Subsector members in the reduction fishery shall deposit and disburse, as well as keep records for and submit reports about, the applicable fees in accordance with §600.1014, except the requirements under paragraphs (c) and (e) of this section. All collected fee revenue a fish buyer collects to repay the loan identified in paragraph (c) of this section shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month. The annual reports identified in paragraph (e) of this section shall be submitted to NMFS by February 1 of each calendar year.

(iii) The reduction loan is, in all other respects, subject to the provisions of §§600.1012 through 600.1017.

(l) *Enforcement for failure to pay fees.* The provisions and requirements of §600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

[77 FR 58779, Sept. 24, 2012]

EFFECTIVE DATE NOTE: At 77 FR 58779, Sept. 24, 2012, §600.1108 was added, effective Oct. 24, 2012.

## Subpart N—Shark Finning

SOURCE: 67 FR 6200, Feb. 11, 2002, unless otherwise noted. Redesignated at 69 FR 53361, Sept. 1, 2004.

### § 600.1200 Purpose and scope.

The regulations in this subpart govern “shark finning” (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

### § 600.1201 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in §§600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and record-keeping requirements found at parts 635 and 648 of this chapter, respectively.

### § 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in §600.10, the terms used in this subpart have the following meanings:

*Land or landing* means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

*Shark finning* means taking a shark, removing a fin or fins (whether or not